DISTRICT II
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COURT OF APPEALS
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MADISON, WISCONSIN 53701-1688
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Cornelia G. Clark
Clerk

September 13,2000

To:

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You are hereby notified that the Court has entered the following order:

00-2147 Timothy John Vickroy, et al. v. State of Wisconsin-Dept. of Transportation, et al. (L.C. #99-CV-1408)

Before Brown, P.J.,

Defendant-respondent Interstate Towing and Mobil has filed a motion to dismiss seeking frivolity fees and costs on the grounds that the appellants have sought to appeal from a non-final order of the circuit court. The record indicates that the circuit court entered a memorandum decision on July 7, 2000 noting that an order for judgment would follow The appellants filed their notice of appeal on August 7, 2000. The order for judgment was entered August 8, 2000. Wis. stat. § 808.04(8) provides that "[I]f the record discloses that the judgment or order appealed from was entered after the notice of appeal was filed, the notice of appeal shall be

treated as filed after such entry and on the day thereof." Wis. stat. § 808.04(8) will govern here, and the defendant-respondent's motion to dismiss and for frivolity fees and costs is denied.

We note further that the plaintiff-appellant's notice of appeal purports to appeal from an order dismissing the State of Wisconsin-Department of Transportation entered February 14, 2000. Pursuant to Wis. stat. § 808.03(1), the order entered February 14, 2000 disposed of the entire matter as to the State of Wisconsin-Department of Transportation. Therefore, the notice of appeal filed with respect to this defendant is not timely and the appeal against the State of Wisconsin-Department of Transportation is dismissed.

Upon the foregoing reasons,

IT IS ORDERED that the defendant-respondent Interstate Towing and Mobil's Motion to Dismiss and for Frivolity Fees and Costs is denied.

IT IS FURTHER ORDERED that the appeal with respect to the defendant State of Wisconsin-Department of Transportation is dismissed.

"I, Cornelia G. Cark, Clerk of the Court of Appeals of the State of Wisconsin, certify that I have compared the foregoing with the original order and/or judgment of the Court in the above entitled cause, and that it is a correct transcript thereof."

Lisa L. Ferman/s, Deputy
Clerk of the Court of Appeals, State of Wisconsin

3/1/02
Date